

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF THE INSOLVENCY ACT 1986

Case No:

IN THE MATTER OF SCL GROUP LTD
COMPANY NUMBER 05514098

IN THE MATTER OF SCL ANALYTICS LTD
COMPANY NUMBER 09838667

IN THE MATTER OF SCL COMMERCIAL LTD
COMPANY NUMBER 08840965

IN THE MATTER OF SCL SOCIAL LTD
COMPANY NUMBER 08410560

IN THE MATTER OF SCL INSIGHT LTD
COMPANY NUMBER 10373330

IN THE MATTER OF SCL ELECTIONS LTD
COMPANY NUMBER 08256225

IN THE MATTER OF SCL USA INC
(A COMPANY REGISTERED IN DELAWARE)

IN THE MATTER OF CAMBRIDGE ANALYTICA LLC
(A COMPANY REGISTERED IN DELAWARE)

APPLICANT'S SKELETON ARGUMENT
In support of an application for an administration order

Time estimate

- *45 minutes court time including reading.*

The Court is invited to pre-read (to the extent time permits): -

- *1st Witness Statement of Julian Wheatland*

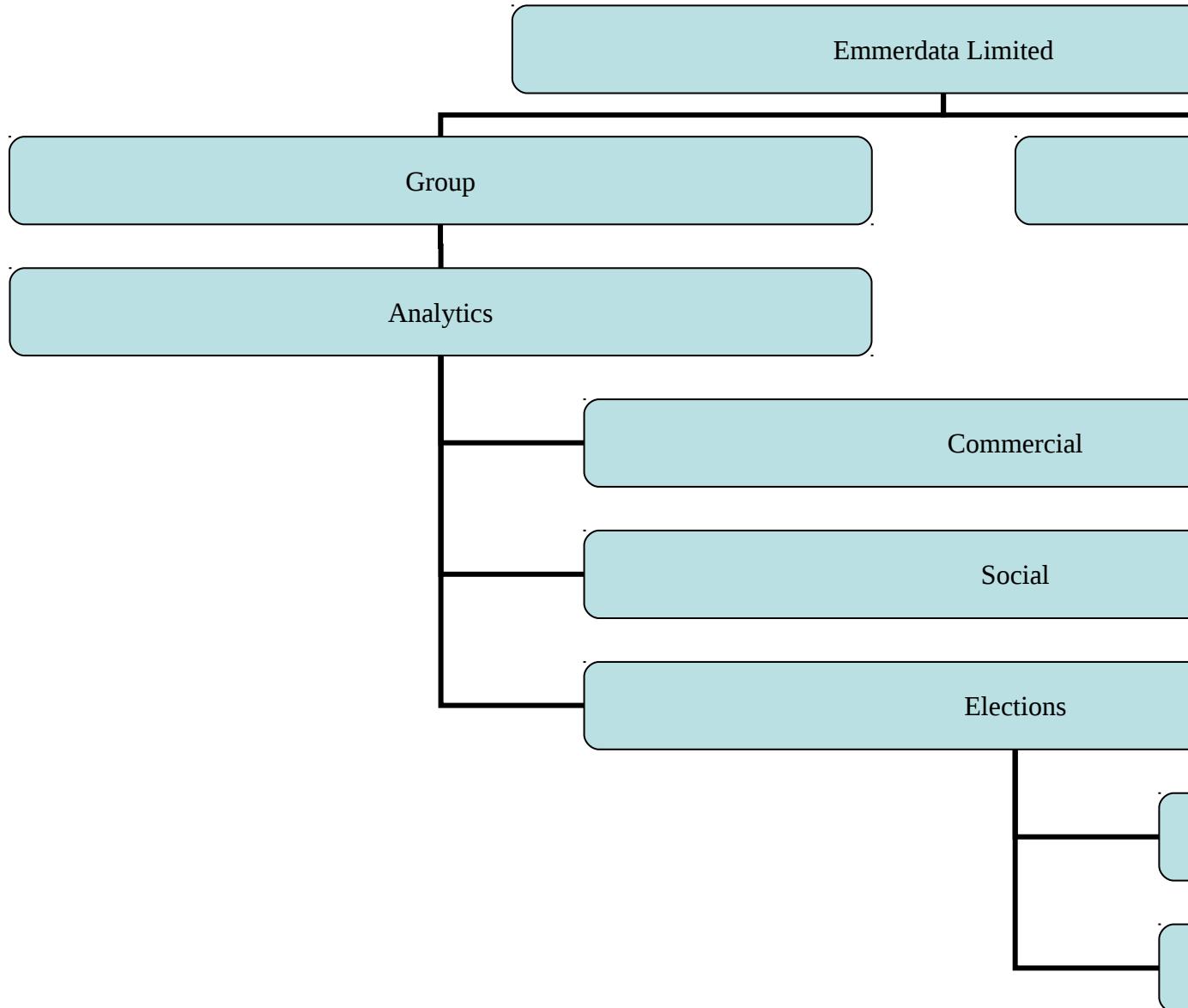
- *Estimated Outcome statements*
- *Draft Minutes of order*

Introduction

1. This skeleton is filed on behalf of the 8 Companies ('the Companies') who are seeking that:
 - a. An administration order be granted for each of the following:
 - i. SCL Group Ltd (**Group**)
 - ii. SCL Analytics Limited (**Analytics**)
 - iii. SCL Insight Limited (**Insight**)
 - iv. SCL Commercial Limited (**Commercial**)
 - v. SCL Social Limited (**Social**)
 - vi. SCL Elections Limited (**Elections**)
 - vii. Cambridge Analytica(UK) Limited (**Cambridge UK**)
 - viii. Cambridge Analytica LLC (**Cambridge**)
 - ix. SCL USA Inc (**USA**)
 - b. Time for service of the application be abridged
 - c. Mr. Vincent John Green and Mr Mark Newman of Crowe Clark Whitehill LLP be appointed Joint Administrators over the Companies under paragraph 12(1)(a) or (b) of Schedule B1 of the Insolvency Act 1986
 - d. That the costs of and occasioned by these applications be, in each case, paid as an expense of the administration.
2. A draft minute of the proposed orders are annexed.
3. These Companies were all previously profitable however, as a result of extremely wide spread bad publicity linked to a scandal regarding Facebook data by

some/all Companies in the group and an undercover recording expose. This was following accusations in numerous high profile news paper. This damaged the brand significantly and lead to clients to withhold their bills.

4. The Companies are all part of a wider group and are involved in the business of behavioural research and strategic communications [1]. The Companies structures can be seen below:



5. They are believed to be insolvent however this position is less clear than is ideal because on 23rd March 2018 the Information Commissions Office raided the

Companies shared office and seized the Companies computers holding financial information []. The Companies have received offers for purchase of business and assets if they can be sold as a going concern. [].

6. As soon as it became apparent that the Companies were close to trading insolvently they began the process of seeking for an administration order.
7. The threshold test for making an administration order is set out in paragraph 11 of Schedule B1; sub-para (a) deals with the requirement of insolvency and sub-para (b) deals with the test for whether or not the purpose of administration will be achieved.

Interested Parties

8. The following were notified of this application:
 - a. Barclays Bank PLC – who were a Qualified Floating Charge Holder but agreed to discharge their security as all outstanding balances had been satisfied. [Annexed]

Consent by Administrator

9. Consent by Mr Vincent John Green and Mr Mark Newman confirming their agreement to act as joint administrators and that in their opinions the purpose of the administration was likely to be achieved was signed on 01/5/2018 [].

Jurisdiction

10. Within the listed companies 2 are registered in the United States of America. These are Cambridge Analytica LLC and SCL USA Inc. While it is acknowledged that these two companies are registered within the USA there is sufficiently clear connection with the UK to grant the court jurisdiction.

11. The jurisdiction of the English court extends over both companies which are registered in England and companies which are incorporated and/or registered outside the United Kingdom (Insolvency Act 1986, section 220).
12. UNCITRAL Model Law on Cross-Border Insolvency ('Model Law') uses the concept of centre of main interests ('COMI') to determine the degree to which the courts of one jurisdiction are obliged to recognise and assist insolvency proceedings commenced in a different jurisdiction.
13. The presumption that a company COMI is in the country of registration is rebuttable under Article 16 (3):

"3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests."
14. Both SCL USA Inc and Cambridge Analytica LLC are substantially controlled and run by SCL Elections Limited, which is registered in England and Wales [].
15. Cambridge Analytica LLC has its assets located in the London Offices of SCL Elections Ltd []. Sole supplier is SCL Election Ltd and it's operational management was exercised from London by SCL Elections Ltd [] and they shared a mutual director in Alexander Nix who was based in the UK[]. For these reasons it clear that Cambridge Analytica LLC COMI was England and Wales and should be subject the jurisdiction of this court.
16. SCL USA Inc entirely owned by SCL Election Ltd, Financed by SCL Elections Ltd, had its accounts managed, products developed, and HR policy and governance provided by SCL Election Ltd []. Its sole customer was SCL Elections Ltd. It's direct connection with SCL Election Ltd made it little more than an extension of SCL Elections Ltd and as it carried out its business only to SCL

Elections Ltd and for these reasons SCL USA Inc COMI was England and Wales and should be subject to the jurisdiction of this court.

17. The Joint Administrators have made clear that if granted in these orders will apply to the Bankruptcy Court for the Southern District of New York for UNCITRAL recognition by filing petitions under Chapter 15 of the USA Bankruptcy code.

Insolvency

18. There are grounds for this Honourable Court to conclude that the Company is or is likely to be cash-flow insolvent. *II*. The debt for the major creditors are unpaid and undisputed. The test in Sch B1 para 11 is satisfied if the Company is likely to become unable to pay its debts; in this case it cannot pay.
19. It cannot be understated that the current impact that the intervention of the ICO has had on the effective running and financial information of the Companies. Without the information contained on the seized equipment on those computers the Companies are simply unable to know their true position and all figures have been estimated pessimistically.
20. Likewise, the sudden and unexpected resignation of Alexander Nix, director of several companies, has led to a lack of clear data regarding finances and operations.
21. Equally, due to creditors pressing for prompt payment and clients withholding their monies, this has led to an even bleaker picture than that described. This has been made worse by clients demanding that were paid on account to be return.

Comparative benefits of an administration order

22. The administrator must consider all of the purposes set out in Sch B1 para 3 in accordance with its hierarchy. The evidence shows that administration is likely to achieve the purpose in para 3(1)(a) and / or (b) of Sch B1.

23. There is some hope of rescuing the Companies as a going concern given the realisation and valuation of intellectual property both held and in progress and a restored income flow from those currently withholding payment [] and once the servers have been returned by the Information Commissioner's officer the Companies have better chance of trading.

24. As a result of the Companies bad publicity many debtors have refused to pay their bills as they believe the Companies will no longer trading, these are unlikely to be realised in liquidation but possible in administration should the Companies continue to operate.

25. What is more certain is that the administration order would enable a more advantageous realisation of the Companies assets than would be likely if the company were wound up. The Companies principal assets comprise of equipment and goodwill of the Companies []. There has been an offer for the business of the Companies already from Alexander Nix and the business has not yet been advertised []An administration would allow for these to be further explored with other interested parties to a greater level of detail. It is hoped that a greater sum might be achieved if exposed to the market.

26. Administration, thus, would have the advantages over liquidation in that:

- a. It would realize a greater value for the assets than available if the Companies went into liquidation as a forced sale would be avoided. []
- b. The Companies would be unlikely to be able to realize a value for its goodwill and substantial intellectual property if they went into liquidation.

- c. Likewise, current works in progress, namely intellectual property, would never be financial realised in they went into liquidation.
- d. Allow realisation of significant debts that are being withheld.
- e. There would be a chance of avoiding the dilution of the return to creditors by redundancy claims if the business was sold as a going concern [].
- f. At present, the Companies are unable to determine their true financial position due to the financial uncertainties cause by seizure of servers by the ICO. The moratorium would allow the Companies to clarify their position and realise their financial position.

27. The relevant test is that contained in paragraph 11(b): '*the administration order is reasonably likely to achieve the purpose of the administration.*' It is not a high test, *Re AA Mutual International Insurance Co Ltd* [2004] EWHC 2430 (Ch)

Conclusion

28. In all the circumstances, it is respectfully submitted that this is an appropriate case for an administration order.

ADAM RICHARDSON